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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2963 of 2003

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1. Vinod Kumar, son of late Shivjee Roy, resident of village- Lakhanpur Tall (New State Boring) P.S. Desri, District-Vaishali (Hajipur).
2. Pramod Kumar, son of late Ganga Sagar Choudhary, resident of Road no. 15, Rajivnagar, P.S.-Digha, District-Patna.
3. Pankaj Sinha, son of late Shashi Bhaushan Prasad Singh, resident of village-Dargawan, P.S. Mehsi, District-West Champaran.

.... Petitioners

Versus

1. The State of Bihar through the Secretary, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.
2. The Superintending Engineer, Advance Planning Circle, Road Construction Department, Patna.
3. The Executive Engineer, Bridge Design Division No. 3, Advance Planning, Road Construction Department, Patna.
4. The Executive Engineer, Bridge Design Division No. II Advance Planning, Road Construction Department, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 14506 of 2002

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1. Pramod Kumar son of late Ganga Sagar Choudhary, resident of Road no. 15, Rajivnagar, P.S.-Digha, District-Patna
2. Vinod Kumar, son of late Shivjee Roy, resident of village- Lakhanpur Tall (New State Boring) P.S. Desri, District-Vaishali (Hajipur).
3. Prashant Kumar, son of late S.K.P. Singh, resident of P.H.E.D., Colony, Daudpur, P.S. Brahmpura, District-Muzaffarpur.
4. Kameshwar Prasad Yadav, son of Shri Lakshman Prasad Yadav, resident of village- Bara Telpa, P.S. Chapra Sadar, District-Chapra (Saran)
5. Rajesh Kumar Srivastava, son of Late Ramdeo Prasad Srivastava, resident of village Kishunnagar, P.S. Kanti, District- Muzaffarpur.
6. Nand Kishore Singh, son of Late Janki Singh, resident of village-Tarwan, P.S. Phulwarisharif, District-Patna.
7. Amit Kumar Singh, son of Late Rambachan Singh, resident of village-Dumri Adda, P.S. Doriganj, District-Saran
8. Prem Chandra Thakur, son of late Ram Swarath Thakur, resident of village-Jhaurhi, P.S. Kalyanpur, District-Samastipur.
9. Md. Shakil Ahmad Rahmani, son of Late Md. Murtaza Rahmani, resident of village-Damodarpur, P.S. Kanti, District-Muzaffarpur.
10. Anjani Kumar Sharma, son of Late Umashankar Sharma, resident of mohalla-Lakshmisagar,(Chuna Bhatti), P.S. Darbhanga Sadar, District-Darbhanga.
11. Anoop Kumar Mishra, son of Late Jeokant Mishra, resident of village-Bajitpur Miari, P.S. Sarairanjan, District-Samastipur.
12. Rajiv Ranjan Sinha, son of Late Binay Kumar Sinha, resident of mohalla Barheta Laheriasarai, P.S. Laheriasarai, District- Darbhanga.

.... Petitioners

Versus

WEB COPY NOT OFFICIAL

1. The State of Bihar through the Secretary, Road Construction Department, Vishweshwariya Bhawan, Bailey Road, Patna.
2. The Superintending Engineer, Advance Planning Circle, Road Construction Department, Patna.
3. The Executive Engineer, Bridge Design Division No. III, Advance Planning, Road Construction Department, Patna.
4. The Superintending Engineer, Saran Road Circle, Hajipur.
5. The Executive Engineer, Road Construction Division, Road Construction Department, Chapra.
6. The Secretary, Public Heath Engineering Department(P.H.E.D.), Government of Bihar, Vishweshwaraiya Bhawan, Campus, Bailey Road, Patna.
7. The Superintending Engineer, P.H.E.D. Circle, Muzaffarpur.
8. The Executive Engineer, Public Heath Engineering Department, Division, Muzaffarpur.
9. The Superintending Engineer, P.H.E.D. Circle, Darbhanga.
10. The Executive Engineer, P.H.E.D. Division, Samastipur.
11. The Secretary, Water Resources Department, Government of Bihar, Sichai Bhawan, Patna.
12. The Secretary, Finance Department, Government of Bihar, Main Secretariat, Patna.
13. The Chief Engineer, Water Resources Department, Samastipur.
14. The Executive Engineer, Flood Control Division, Samastipur.

.... Respondent/s

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Appearance :
(In CWJC No. 2963 of 2003)
For the Petitioner/s : Mr. Kishore Kumar Thakur
For the Respondent/s : Mr. Rabindra Kumar Choubey S.C.-8
Mr. Bijay Shankar Choubey A.C. to S.C.-8
(In CWJC No. 14506 of 2002)
For the Petitioner/s : Mr. Kishore Kumar Thakur
For the Respondent/s : Mr. Kumar Kaushik A.C. to G.P. XI

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 02-08-2012

Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State of Bihar and others official respondents.

2. C.W.J.C. No. 14506 of 2002 was filed on behalf of the 12 petitioner's seeking the following reliefs:

"(i) To quash the office order contained in Memo No. 260 dated

15.11.2002 issued under the signature of Respondent Executive Engineer, Bridge Design Division No. III (Respondent No. 3) so far as it relates to petitioner No. 1 by which, the designation of the petitioner No. 1 has been changed from Accounts Clerk to that of Junior Accounts Clerk and thereby the petitioner No. 1 has been treated to be reverted to a non-existent post of Junior Accounts Clerk.

(ii) For a further direction to the respondents to pay to the petitioners the arrears of salary as well as the current salary in the pay-scale of Rs. 4500-7000 as also in the previous pay scales admissible to the members of the cadre of Accounts Clerk to which cadre the petitioners belong and which cadre has not been demerged by any instrument of the respondent State till date.

Thereby, the petitioners pray that the respondents be restrained from treating the petitioners as the members of the cadre of Junior Accounts Clerk in the light of the letter No. 6389 dated 28.09.1999 issued by the respondent State in its Department of Finance and further in compliance of the judgment and order dated 15th February, 1999 passed by a Division Bench of this Hon'ble Court in C.W.J.C. No. 7119 of 1991."

3. When the case was taken up at the stage of admission, learned counsel for the petitioner confined the application only for payment of salary of the posts of Accountant Clerks to the petitioner.

In that view of the matter, two of the petitioners of C.W.J.C. No. 14506 of 2002 i.e., petitioner no. 1 Pramod Kumar and petitioner no. 2 Viond Kumar filed another writ petition i.e. C.W.J.C. No. 2963 of 2003. In view of the fact that in the earlier application i.e. C.W.J.C. No. 14506 of 2002 their prayer was for grant of payment of salary admissible to the post to the Accounts Clerk, by an order dated 24.02.2004 passed in C.W.J.C. No. 2963 of 2003, it was directed to be heard alongwith C.W.J.C. No. 14506 of 2002 and it is in this background both the cases have been listed together for final hearing today.

4. The petitioners in both the cases were appointed on different dates between the period 1992-1997 with the only exception that petitioner no. 3 of C.W.J.C. No. 14506 of 2002 was appointed sometimes in the year 1983 as accounts clerk.

5. Though; the lis as it exists today, does not require to be dealt with in detail in view of the subsequent development and plea that persons similarly situated, and even two persons who are writ petitioners in C.W.J.C. No. 14506 of 2002, have been granted the pay-scale of Accounts Clerk and accordingly the petitioners will also be entitled for the same pay-scale on the ground of parity; it would be apt to refer to the facts / case in brief.

6. There existed two separate cadre / posts of Junior Accounts

Clerk and Senior Accounts Clerk. With effect from 01.05.1980, it was decided that the two posts would be known as the Accounts Clerk and at the same time, it was decided to merge the lower scale of pay of Junior Accounts Clerk with the Higher Scale of pay of Senior Accounts Clerk.

7. As has been noted hereinabove, the petitioners of these cases are appointed after 01.05.1980 as Accounts Clerk. On 08.09.1999, the State Government of Bihar vide its resolution as contained in Annexure-2 to the C.W.J.C. No. 14506 of 2002 decided to demerge the posts of Accounts Clerk with the clear stipulation that those employees who were already in service shall continue to remain in the higher post and there would be no question of adjusting them on the lower post of Junior Clerk i.e. newly created posts entering lower pay-scale. The effect of the decision was that there was no demerger of the existing posts in the cadre of Accounts Clerk so as to provide some of them the lower posts of Junior Accounts Clerk and remaining higher post of Senior Accounts Clerk. These writ petitioners are aggrieved by the order dated 15.11.2002, as contained in Annexure-1 whereby the nomenclature of the posts of which petitioners no. 1 and 2 were holding is sought to be changed from Accounts Clerk to Junior Accounts Clerk.

8. The plea of the petitioners is based primarily on the fact that

on the dates of their respective appointments there existed no post of Junior Accounts Clerk and they were appointed as Accounts Clerk and in no circumstance their designation can be changed to the lower post of Junior Accounts Clerk.

9. As regards petitioner no. 3, by way of a supplementary affidavit filed on behalf of the petitioner in course of hearing of the present case, it has been stated that his designation has been restored to that of the Accounts Clerk, with effect from the date of his appointment. As regards petitioner no. 1 and 2, it has been stated on instruction by Mr. Thakur, learned counsel appearing on behalf of them that they have also been restored by designated them as Accounts Clerk. They have been given all consequential benefits including the benefits of the Assured Career Progression. C.W.J.C. No. 2963 of 2003 and C.W.J.C. No. 14506 of 2002 have become infructuous to the extent, the cases relate to these three persons. Petitioner no. 3 of C.W.J.C. No. 2963 of 2002 is also similarly situated in his case also nomenclature of his post has been changed to that of the Accounts Clerk with consequential benefits. C.W.J.C. No. 2963 of 2003 has become infructuous as all the petitioners of this case have been grated relief departmentally.

10. In view of the plea that similarly situated persons have been granted relief including petitioners No. 1, 2 and 3 of C.W.J.C. No.

14506 of 2002, I direct the Secretary, Finance Department, Government of Bihar (Respondent No. 12) and the concerned Superintending Engineers under whom the rest of the petitioners are working to ensure that these petitioners are also given the similar treatment by designating them as Accounts Clerk and giving their salary allowances and other consequential benefits including Assured Career Progression, if their cases are found to be at par with Petitioner No. 1 Pramod Kumar, Petitioner No. 2 Vinod Kumar and Petitioner No. 3 Prabhat Kumar of C.W.J.C. No. 14506 of 2002.

11. With this direction, this writ application is disposed of.

(Chakradhari Sharan Singh, J.)

The Patna High Court
The 2nd August, 2012
Saif/-N.A.F.R.